STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 8, 1999
v	No. 203980 Newaygo Circuit Court
JAMES RAY POWERS, Defendant-Appellant.	LC Nos. 96-006152 FH 96-006153 FH 96-006154 FH

Before: Gage, P.J., and MacKenzie and White, JJ.

PER CURIAM.

Defendant was convicted by a jury of one count of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(a); MSA 28.788(3)(1)(a), and two counts of fourth-degree criminal sexual conduct (CSC IV), MCL 750.520e; MSA 28.788(5). He was sentenced to concurrent prison terms of eight to fifteen years for the CSC II conviction and twelve to twenty-four months each for the CSC IV convictions. He appeals as of right. We affirm.

Defendant first argues that the trial court erred when it denied his motion to suppress a written statement that he made to the police after administration of a polygraph examination. Defendant claims that the statement was obtained in violation of his Sixth Amendment right to counsel. We disagree. The polygraph examination was conducted at defendant's request. Officer Swabash informed defendant of his *Miranda*[1] rights before administering the examination. Defendant was also informed that, while an attorney was not permitted to be present during the examination, he could stop the questioning at any time and seek assistance from his attorney. Contrary to defendant's argument, we conclude that re-administration of *Miranda* warnings before the post-polygraph questioning was not necessary where defendant was specifically advised that the initial warnings applied to both pre- and post-polygraph questioning, the questioning took place immediately after the polygraph examination was administered, and the entire process only took approximately one hour. Consequently, defendant's waiver of his *Miranda* rights constituted a knowing and intelligent waiver of his Sixth Amendment right to counsel. *Patterson v Illinois*, 487 US 285, 299; 108 S Ct 2389; 101 L Ed 2d 261 (1988); *People v McElhaney*, 215 Mich App 269, 276-277; 545 NW2d 18 (1996).

Defendant next argues that his statement should have been suppressed because it was involuntary. Initially, we note that defendant did not preserve this issue by seeking to suppress his statement on this basis at trial. *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994). Moreover, defendant does not cite any factual support for his claim. A party may not leave it to this Court to discover and rationalize the basis for a claim. *People v Kelly*, 231 Mich App 627, 640; 588 NW2d 480 (1998). In any event, our review of the totality of the circumstances surrounding the polygraph examination and defendant's waiver of his *Miranda* rights leads us to conclude that the statement was in fact voluntary. *People v Sexton*, 458 Mich 43, 67-68; 580 NW2d 404 (1998); *People v Givans*, 227 Mich App 113, 121; 575 NW2d 84 (1997).

Defendant's challenge to the proportionality of his CSC II sentence is without merit. The eight- to fifteen-year sentence, which is within the sentencing guidelines, is proportionate when considering the circumstances of the offense, the age of the victim, the relationship between defendant and the victim, and the fact that this was not an isolated offense. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990). To the extent that defendant challenges the scoring of the sentencing guidelines, he has waived review of this issue by failing to object to the scoring of the guidelines at sentencing. *People v Kisielewicz*, 156 Mich App 724, 728; 402 NW2d 497 (1986). Even if preserved, because defendant's challenge does not relate to the factual predicate for the sentence, he has failed to state a cognizable claim for relief. See *People v Mitchell*, 454 Mich 145, 177; 560 NW2d 600 (1997). Accordingly, we also reject defendant's claim that the trial court failed to articulate reasons for "departing" from the guidelines.

Defendant erroneously argues that certain statements made by the prosecutor during closing and rebuttal argument improperly shifted the burden of proof. The prosecutor's remarks constituted proper commentary on defendant's theory of the case. See *People v Fields*, 450 Mich 94, 115; 538 NW2d 356 (1995).

Next, defendant claims the trial court erred by failing to strike testimony from one of the victims that allegedly violated a pre-trial evidentiary ruling. However, manifest injustice will not result from our failure to review this unpreserved issue. *People v Asevedo*, 217 Mich App 393, 398; 551 NW2d 478 (1996). The allegedly improper testimony was elicited by defense counsel in response to an open-ended question. Reversible error cannot be error to which the aggrieved party contributed by plan or negligence. *Harville v State Plumbing & Heating, Inc*, 218 Mich App 302, 323-324; 553 NW2d 377 (1996).

Defendant next claims that the trial court abused its discretion when it excluded a particular letter from evidence. We disagree. The letter, written by a friend and sent to one of the victims, was not relevant to any material issue at trial, including defendant's theory of the case. MRE 401. Accordingly, the trial court did not abuse its discretion in refusing to admit the letter into evidence. *People v Sawyer*, 222 Mich App 1, 5; 564 NW2d 62 (1997).

Defendant argues that the trial court erred when it accepted the jury's verdict without first providing the jury with a transcript of one of the victim's testimony, which the jury had requested before it announced that it had reached a verdict. However, defendant cites no authority in support of his claim

that the trial court had an absolute duty to provide the transcript before accepting a verdict. A party who fails to cite authority to support his argument on appeal waives review of the issue. *People v Hanna*, 223 Mich App 466, 470; 567 NW2d 12 (1997).

Finally, defendant sets forth seven instances of alleged ineffective assistance of counsel. However, limiting our review to the record, defendant has not established any basis for relief due to ineffective assistance of counsel. *Mitchell*, *supra* at 156, 164-165; *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995).

Affirmed.

/s/ Hilda R. Gage
/s/ Barbara B. MacKenzie
/s/ Helene N. White

[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).